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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2015/2010

Decision adopted by the Committee at its 113th session (16 March–2 April 2015)

Submitted by:	H.S. (not represented by counsel)
Alleged victim:	The author
State party:	Australia
Date of communication:	19 February 2010 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 9 December 2010 (not issued in a document form)
Date of adoption of decision:	30 March 2015
Subject matter:	Right to a hearing before a competent, independent and impartial tribunal; access to court.
Procedural issues:	Incompatibility *ratione materiae*; lack of substantiation.
Substantive issues:	Right to a hearing before a competent, independent and impartial tribunal; presumption of innocence; right to examine witnesses; guilty of an act which did not constitute a criminal offence at the time it was committed; right to privacy and family life.
Articles of the Covenant:	Articles 11; 14 (1) in conjunction with 2 (2); 14 (2, 3 and 5); 15; and 17.
Articles of the Optional Protocol:	Articles 2 and 3.

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Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (113th session)

concerning

Communication No. 2015/2010*

Submitted by:	H.S. (not represented by counsel)
Alleged victim:	The author
State party:	Australia
Date of communication:	19 February 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 2015,

Having concluded its consideration of communication No. 2015/2010, submitted to the Human Rights Committee by H.S. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Decision on admissibility

1.1 The author of the communication is H.S., an Australian and Polish national born in 1950. She claims to be the victim of a violation by Australia of her rights under articles 11, 14, 15 and 17 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 25 September 1991. The author is not represented by counsel.

1.2 On 28 February 2011, pursuant to rule 97, paragraph 3, of its rules of procedure, the Committee, acting through its Chairman, granted the request of the State party to have the issue of admissibility of the communication examined separately from its merits.

The facts as submitted by the author

2.1 The author is the managing director of a company she established to market her invention in the field of fastener technology. She owned 64.5 per cent of the company. In

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

February 2005, the concept test yielded exceptional results, and the two other directors, L. and D., issued company shares to existing shareholders at a 95 per cent discount, aiming to make the author a minority shareholder. Consequently, during a general meeting, the author removed L. and D. and appointed her daughter C as a director. At the time, the company was working with a venture capital specialist to raise capital in the range of $2 to 3 million.

2.2 On 17 June 2005, L. and D. filed an "originating process application" (the first set of proceedings) before the Supreme Court, requesting a permanent injunction under section 1324 of the Corporations Act (2001) to remove the author as a director of the company, and to declare that she held 5 per cent of the company's shareholding in trust for D. On the first day of the hearing, an injunction was ordered against the author, causing the venture capital specialist to stop working with the company. On 2 September 2005, an injunctive order was issued requiring the author to inform the Australian Securities and Investment Commission (ASIC) about the reinstatement of L. and D. as directors. On 26 April 2006, the Court of Appeal held that D. ceased to be director of the company, but upheld the reinstatement of L. On 15 November 2006, the High Court of Australia refused special leave to appeal finding no error in the judgement of the Court of Appeal and concluding that the author's assertion of bias was unfounded.

2.3 On 30 January 2006, during the hearing of her interlocutory application, the author discovered that L. and D. had appointed external administrators to the company. She challenged the validity of that appointment. On 8 February 2006, the administrators in turn filed an application (the second set of proceedings) for "declaration of the validity of the statutory contract of their appointment as external administrators" against the author personally, even though she, as an individual, did not have any contractual relationship with them. On 16 June 2006, a judge of the Supreme Court of Western Australia declared the appointment of the external administrators valid. The author thereafter filed an appeal for "stay of orders", without success. In August 2006, L. and other company shareholders converted the external administration into liquidation after the author's application for stay was refused; the company was sold to IQ Fasteners, a company registered by L. and other company shareholders. On 16 December 2008, the author filed an application before the High Court of Australia for special leave to appeal and summons to stay all related processes in the court. Her application was rejected.

2.4 In June 2006, the external administrators complained to ASIC that the author had not supplied the company books. On 11 August 2006, a prosecution notice was sent to her (the third set of proceedings). The author pleaded no jurisdiction and applied to the High Court of Australia requesting it to prohibit her prosecution, in vain. On 20 February 2008, the Magistrates Court of Western Australia convicted the author under section 438B (4) of the Corporations Act and fined her $A 1,500. The author appealed, claiming that the court did not have jurisdiction to convict her, but on 16 July 2009, the Court of Appeal of the Supreme Court of Western Australia dismissed her appeal, stating that the lower court had the necessary jurisdiction. On 9 December 2009, the High Court of Australia rejected the author's application for special leave to appeal, finding the author's request unfounded. Subsequently, the author filed another appeal, which was also dismissed.

2.5 The author notes that she has exhausted all available domestic remedies by pursuing appeals, including applications for the special leave to appeal to the High Court of Australia. Her applications at each level of the courts, including the High Court of Australia, were procedural and reflected all of the procedural violations referred to in the present communication.

The complaint

3.1 The author submits that she was charged and convicted for not supplying the company books under section 438B of the Corporations Act (2001) which, according to

her, relates to a contractual obligation and yet it carries a penalty of imprisonment of up to one year. Therefore, the law in question contravenes article 11 of the Covenant.

3.2 She invokes article 14 (1), in conjunction with article 2 (2), of the Covenant, and claims that the State party failed to provide her with a judicial system that fulfils the criteria of competence, independence and impartiality. She contends that the State party refused to take the necessary steps to adopt laws in order to give full effect to the rights enshrined in article 14 (1). She claims that she did not have access to a competent tribunal in the first set of proceedings, as what she refers to as the "matter" was missing in the lawsuits that were brought against her and, in particular, that there was no provision for lawsuits between company directors. She further submits that, even though the company was not a party to the proceedings, it was cast in the role of defendant by the court. In the second set of proceedings, when the two external administrators requested a declaration of validity of their appointment, the company was not a party to the proceedings and instead, the author was sued in her private capacity. In the absence of a contract between the author and the external administrators, the author submits that she could not have been sued.

3.3 The author claims that a Court of Appeal judge was biased, as he provided judicial help to the other party by asking leading questions and suggesting the answers. Furthermore, the Court of Appeal decided to reinstate L. as a director. With regard to the appointment of the external administrators, the Court of Appeal rejected all the evidence provided by the author and relied on the other party's evidence. With regard to the criminal proceedings, the author claims that the judge was biased as the cross-examination of witnesses was constantly interrupted and some of the author's questions were rejected by the judge.

3.4 The author claims that there was judicial incompetence and arbitrariness in all the sets of proceedings, in violation of article 14 (1) of the Covenant. She claims that in the first set of proceedings, all the laws invoked were misinterpreted and misapplied. In the second set of proceedings concerning whether L. and D. were directors and could appoint external administrators, in order to confirm the validity of the administrators' appointment, the court based its conclusion on "facts unsupported by any evidence or contrary to it". As to the arbitrariness of the third set of proceedings, the author argues that ASIC did not have the necessary "prosecuting powers", as defined under section 49 of the ASIC Act and section 135 of the Corporations Act, and that she did not have to submit the originals of the required books or documents.

3.5 As someone without a legal background, the author submits that the four days she was granted to prepare her submissions for the second set of proceedings was insufficient, thus leading to a breach of her rights under article 14 (1) of the Covenant.

3.6 The author claims that her right to be presumed innocent until proven guilty, as guaranteed under article 14 (2) of the Covenant, was violated because she could not have been found guilty by a court the jurisdiction of which she had challenged. She further claims that she was found guilty because she had supplied an electronic version of the company books, even though the prosecutor was unable to prove that she should have provided the originals. Furthermore, she underlines that the prosecutor was unable to prove that the company was under valid administration; that she was the company director when the books were delivered; that she was in possession of the books but not entitled to keep them and that she had failed to deliver them to the administrators.

3.7 In the context of the third set of proceedings, the author claims a violation of article 14 (3 (a)) of the Covenant on account of the fact that the national authorities had failed to inform her "about the facts behind the charge", as even though the prosecution notice handed to her contained the reference to section 438B of the Corporations Act (2001), the "particularities" were missing.

3.8 The author claims a violation of her rights under article 14 (3 (e)) of the Covenant, as in all the proceedings her right to present evidence and to summon and examine witnesses was violated. In the first set of proceedings, the author submitted an affidavit in which she pointed out that certain facts in L.'s affidavit were incorrect, which L.'s counsel admitted. However, the judge disregarded that. In the second set of proceedings, the author claims that she was denied the opportunity to examine the plaintiffs' witnesses. In the third set of proceedings, the author claims that her witness examination was constantly interrupted by a prosecutor and that the request to summons and question D. was refused since his written statement was already on file. Moreover, she claims that none of her arguments that the court lacked jurisdiction was properly considered.

3.9 The author claims that she is a victim of a violation of article 14 (5) of the Covenant, as her conviction and sentence were never reviewed by a higher tribunal according to the law, despite going through all the levels of appeal and two applications for leave to appeal to the High Court of Australia.

3.10 With regard to her conviction, the author claims a violation of article 15 of the Covenant, as that she was found guilty of a criminal offence that did not constitute an offence. She had sent e-mails regarding the company books to the administrators and claims that Section 438B of the Corporations Act does not require provision of the originals, the offence for which she was convicted.

3.11 She further claims to be a victim of a violation of article 17 of the Covenant, as the judgements were posted on the Internet and the proceedings traumatized her daughter. Furthermore, she could not find any other gainful employment.

State party's observations on admissibility

4.1 By note verbale of 11 February 2011, the State party challenged the admissibility of the author's complaints. At the outset, it noted that the author alleged a number of violations under the Covenant and submitted several documents, including judgements, transcripts of proceedings and court orders. However, it argued that her claims were unclear regarding the extent to which the author saw each article applying in relation to specific allegations and events. Therefore, the State party had to make assumptions about the nature of the author's allegations in its observations.

4.2 Given the unclear presentation of the facts by the author, the State party presents the facts with a number of additional details in an attempt to introduce some clarity. It notes that in 1997, the author and a business partner started a business based on the marketing and sale of an industrial fastener. In 2005, court proceedings were initiated against the author in the Supreme Court of Western Australia by two shareholders in the company who were disputing their removal as directors by the author and her daughter. The author appealed the decision of the court to place an interlocutory injunction in that matter before the Supreme Court of Western Australia Court of Appeals, which set aside part of the previous decision and substantially upheld the rest of the order. The High Court of Australia refused the author special leave for further appeal. The substance of that hearing did not progress due to the appointment of administrators and further court action in that regard (the first set of proceedings).

4.3 In January 2006, administrators were appointed for the company by a number of directors but not by the author. She disputed the validity of that appointment and a dispute arose between the author and the administrators. The administrators then initiated court proceedings against her in the Supreme Court of Western Australia and the court held that their appointment was valid. The author appealed that decision to the Supreme Court of Western Australia Court of Appeal. An application by the author to seek special leave was refused by the High Court (the second set of proceedings).

4.4 Furthermore, due to the author's failure to fulfil a statutory requirement to provide various documents to the appointed administrators, she was referred to ASIC. As a result, she was charged with two offences under the Corporations Act (2001). The Magistrates Court in Perth found the author guilty of having committed one of those offences. She subsequently appealed to the Supreme Court of Western Australia Court of Appeal, which upheld the decision of the lower court. The author was fined $A 500. The author represented herself in each of the matters and has not sought legal counsel.

4.5 The State party adds that the communication is inadmissible as the author has failed to substantiate her claims and, in the alternative, her claims are inadmissible *ratione materiae* as they do not relate to rights set forth in the Covenant.

4.6 The State party takes note of the author's statement that the overarching basis of the communication is "the State party's failure to provide a court to" her. It submits that the author has failed to substantiate, to the degree required by article 2 of the Optional Protocol to the Covenant and rule 96 (b) of the Committee's rules of procedure, that any of the articles have been violated. It refers to the Committee's views on the issue of non-substantiation of allegations, in which the Committee has stressed that authors must submit sufficient evidence substantiating their allegations for purposes of admissibility.[1] The Committee has stated that "a 'claim' is, therefore, not just an allegation, but an allegation supported by substantiating material".[2] The State party maintains that the author has failed to provide substantive evidence in relation to her claims.

4.7 In the context of the author's allegations concerning a violation of her rights guaranteed by article 11 of the Covenant, the State party submits that the obligation that resulted in the author's criminal conviction was a legal and not a contractual obligation that arose out of the author's obligations as a director of a company. For that reason, the author's allegation is incompatible *ratione materiae* as it does not relate to the rights guaranteed under the Covenant.

4.8 As to the author's claims under article 14 of the Covenant and her allegation that her "right to a decent legal system" has been violated, the State party notes that it is unclear which specific right the author claims has been violated in the context of her allegations concerning the opportunity she claims she was denied to present and contest all the arguments and evidence. The author's discussions of her allegations in relation to all the sets of proceedings, while expansive, are based solely on her own interpretation of Australian domestic law and judicial proceedings.

4.9 The State party notes that the author's allegations in relation to the "right to a competent tribunal violation", "access to courts violation", "violation of her right to impartial tribunal – bias rule", "arbitrary decision manifest error violation" and "violation of right to independent tribunal" all appear to refer to an alleged violation of article 14 (1) of the Covenant, in particular, to the second sentence of article 14 (1). The State party submits that the author has failed to substantiate those claims. It further notes that the author's claims appear to be entirely based upon her own assessment of the legal issues, which was the subject of the numerous court appearances detailed in her communication. She has not provided any evidence of lack of competence on the part of the court. The State party submits that the interpretation of Australian law raised by the author has been addressed competently and to a sufficient degree of detail in the judgements of the courts. She has not provided any independent legal advice to support her claims. In that regard, the State party notes that the Committee has, in its previous Views, indicated that the

[1] The State party refers to the following reports of the Human Rights Committee: A/64/40 (Vol. I), para. 118; A/63/40 (Vol. I), para. 108; A/62/40 (Vol. I), para. 119; and A/61/40 (Vol. I), para. 115.

[2] The State party refers to the report of the Human Rights Committee (A/64/40 (Vol. I)), para. 118.

Committee is not a "fourth instance" of appeal from a State's Supreme Court and its role is not to interpret domestic legislation.[3] It submits that its judicial system satisfies the test outlined by the Committee, being a body that is established by law and is independent of the executive and legislative branches of government.[4] It notes that the author has not submitted any evidence to refute that fact and therefore, her claims under article 14 (1) should be dismissed as unsubstantiated and, in the alternative, that they are inadmissible *ratione materiae* as they do not relate to rights set forth in the Covenant.

4.10 As to the author's claim regarding the "access to courts violation", the State party notes that it is unsure as to the nature of this complaint. It appears that the author is alleging that she was unable to gain access to courts; however, she provides copies of judgements, transcripts and court orders which all, on the contrary, constitute evidence of her access to and use of the Australian judicial system, as well as demonstrating that she made full use of the appeals procedures, as was appropriate. Consequently, the State party submits that this allegation is inadmissible as the author has failed to show that she has a claim that could be considered under article 2 of the Optional Protocol.

4.11 Regarding the author's claim concerning the "public hearing right violation" under article 14 (1) of the Covenant, the State party notes that the copies of the judgements, transcripts and awards provided by the author show that she had access to, and made use of, the judicial system and a public and transparent hearing. Accordingly, the State party submits that this allegation is inadmissible as the author has failed to show that she has a claim that could be considered under article 2 of the Optional Protocol.

4.12 As to the author's claims under article 14 (2) of the Covenant in the context of the right to be presumed innocent, the State party submits that she has not substantiated this claim. Instead, the author has offered her personal legal analysis of the legal procedure and the case that resulted in her conviction. Therefore, this claim is inadmissible due to a failure to substantiate it.

4.13 As regards the author's claims under article 14 (3) of the Covenant in the context of her right to be informed of the facts behind the charge, the State party notes that she has provided and quoted the prosecution notice, which includes details of the charge. This indicates that she was informed of the facts behind the charge. Therefore, this claim should be dismissed due to lack of substantiation.

4.14 Regarding the alleged violation of article 14 (1) of the Covenant, in the context of the author being given insufficient time to prepare her case in the second set of proceedings, the State party submits that there is no temporal element to article 14 (1) and that the obligation in relation to time to prepare a court defence falls within the scope of article 14 (3). Further, the State party observes that, in support of her claim that article 14 (1) provides for obligations in relation to time to prepare a legal matter, the author cites communication No. 1125/2002, *Jorge Luis Quispe Rouque* v. *Peru*. However, that case provides no authority in regard to a temporal requirement for case preparation under article 14 (1) of the Covenant, as the Committee found in that case that there had been widespread violations of article 14 rights, without making reference to any specific subsection. Moreover, that particular case involved a criminal matter, while the author alleges violations in respect of a civil dispute. Consequently, the State party maintains that the author's respective claims are incompatible with the provisions of the Covenant *ratione materiae*.

[3] The State party makes reference to communication No. 215/1986, *G.A. van Meurs* v. *The Netherlands*, Views adopted on 13 July 1990, para. 7.1.

[4] The State party makes reference to the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 18.

4.15 In the alternative, the State party submits that the author's allegations concerning insufficient time for her case preparation could be understood as an allegation of a violation of article 14 (3 (b)) of the Covenant. Given that those allegations relate to the second set of proceedings, which were civil proceedings between the administrators of the company and the author, and which were not therefore of a criminal nature, and given that article 14 (3 (b)) deals exclusively with the rights of an accused facing criminal charges, the State party maintains that this claim is incompatible *ratione materiae* with the provisions of the Covenant.

4.16 The State party notes that the author appears to allege a violation of article 14 (3 (e)) of the Covenant in the context of her right to summon and examine witnesses. That provision, however, refers specifically to criminal matters. The State party therefore submits that the author's claims in the first and second sets of proceedings, which were both civil matters, should be found inadmissible as incompatible *ratione materiae*. In relation to the third set of proceedings, the author alleges a violation in relation to a witness not appearing before the court of his/her own volition. The State party notes that there is no requirement for a State party to compel a witness to appear in court and that, in addition, the author has provided no evidence to suggest that the State party specifically impinged upon the author's rights to call a witness to her defence. In the light of the above, the State party submits that that claim should be dismissed as inadmissible, as the author has failed to substantiate her claims and, in the alternative, that the claims are inadmissible *ratione materiae*.

4.17 As to the author's allegation that she has been found guilty of a criminal offence that amounts to a violation of article 15 of the Covenant, the State party notes that she offers no further explanation or evidence in support of that claim, but she instead discusses the definition of "books" under domestic law, specifically under the Corporations Act. Therefore, that claim is inadmissible as it is unsubstantiated. In the alternative, the State party notes that a possible interpretation of the author's allegation under article 15 of the Covenant is that she is of the opinion that she did not commit a crime as defined under the Corporations Act. In that regard, the State party notes that article 15 relates to the prohibition of retroactive criminalization of acts and penalties except in circumstances recognized by customary international law. Given that the author does not appear to be alleging that the Act she was charged under was not in force at the time when she was charged, the State party submits that that claim is incompatible *ratione materiae* with the provisions of the Covenant.

4.18 Lastly, the State party notes that the author alleges violation of article 17 of the Covenant owing to the publishing of open court proceedings on the Internet and a loss of financial resources due to the costs of the legal proceedings. The State party submits that, in order to be considered a violation of article 17, an act must be unlawful and arbitrary or, in the case of attacks on honour and reputation, simply unlawful. The author has not provided any evidence that the publishing of court documents and a record of the criminal charge were carried out in a manner that was unlawful or arbitrary. Furthermore, publishing legal judgements is a legal requirement, a common practice and, moreover, conforms to article 14 (1) of the Covenant. In that regard, the State party notes that the author has not claimed any of the exceptions to publishing provided for in the last sentence of article 14 (1) of the Covenant. Therefore, this claim should be dismissed as unsubstantiated. As to the author's claim that the court judgements contain "judicial attacks on (the author's) personality", the State party refers to the Committee's previous Views in relation to

statements made by judges in the execution of their duty.[5] Accordingly, the author's claims are inadmissible *ratione materiae* as they do not relate to rights set forth in the Covenant. Furthermore, the author claims a violation of article 17 on account of the fact that her daughter suffered a mental illness as a result of her exposure to frequent litigation, both as a party in the proceedings and as an observer. The State party submits that this claim is inadmissible because it is unsubstantiated.

Author's comments on the State party's observations on admissibility

5.1 In reply to the State party's observations, on 28 May 2011, the author submitted that, even though she had not supported some of her allegations with evidence, she disagreed with the State party's submission that her claims were inadmissible on the ground that they did not relate to the rights set forth in the Covenant. She reiterated in detail the circumstances of the three sets of proceedings and submitted that her "complaint is about the State party's failure to provide a decent court (to her)". The State party "conducted three series of totally vexatious and malicious court proceedings against (her) personally, purportedly under corporations law. These proceedings suffered for want of jurisdiction, justiciable controversy, lacked proper parties and were altogether unconstitutional, which amounts to fundamental procedural failures". The author claimed that she was victimized by the judicial branch of the State party, which "with wanton disregard to (her) right to self-determination, in free pursuit of (her) chosen occupation, for (her) own ends to freely pursue economic, social and cultural development, to freely dispose of (her) resources, as stipulated under article 1 of the Covenant", violated articles 14, 15 and 17 of the Covenant.

5.2 In particular, by referring to article 14 (1) in conjunction with article 2 (2) of the Covenant, the author submits that the State party has failed to ensure a judicial system that fulfils the criteria of competence, independence and impartiality, as required by article 14 of the Covenant, and that the State party refuses to take the necessary steps to adopt laws in order to give effect to the rights protected under article 14 (1). The State party's courts are not independent as they are appointed by the executive branch without any objective criteria and there are no adverse legal consequences for judges found guilty of gross misbehaviour. Over the last six years, she claims that she has been "actually terrorized and (her) life was ruined with the use of (the State party's) courts". As a result, she cannot initiate proceedings against L., D. and the administrators for compensation as, given her past experience, she can expect only manifestly unreasonable judgements.

5.3 The author notes that since 17 June 2009, she has been requesting that the Attorney General participate in the first set of proceedings in order to ensure "a fair trial", in vain. The second and third sets of proceedings were unconstitutional per se, and are therefore "null and void". The author explains at length that the domestic courts in all three sets of proceedings were not competent tribunals within the meaning of article 14 (1) of the Covenant, as they lacked jurisdiction due to different circumstances and reasons related to the parties of the proceedings, the standing of the plaintiff, the authority of ASIC to initiate proceedings against the author and the lack of "matter".

5.4 The author also claims judicial incompetence and arbitrariness in all the sets of proceedings, in violation of article 14 (1) of the Covenant. She submits that in the first set of proceedings, all the laws invoked were misinterpreted or misapplied. She considers that different sections of the Corporations Act were completely misinterpreted by the court and claims that the injunction to prevent her from being a director of the company was granted unlawfully. In the second set of proceedings concerning whether L. and D. were directors

[5] The State party makes reference to communication No. 380/1989, *R.L.M.* v. *Trinidad and Tobago*, decision of inadmissibility adopted on 17 June 1989.

and could appoint external administrators, the author submits that the national court based its judgement confirming the validity of the administrators' appointment on "facts unsupported by any evidence or contrary to it". As to the arbitrariness of the third set of proceedings, the author argues that ASIC did not have the necessary "prosecuting powers", as defined under section 49 of the ASIC Act and section 135 of the Corporations Act; that she did not have to submit originals of the required bank statements; and that she was found "guilty, not as charged", as she was found guilty of not supplying the originals of bank statements and not saying where the tax return was, while she was charged with "non-supply of books and not telling where the books are".

5.5 Furthermore, she maintains that she did not have access to courts, in violation of article 14 (1) of the Covenant. She notes the State party's argument that she was ensured access to courts, as she had attached to her communication judgements, transcripts and court orders which prove her access to and use of the Australian judicial system. In that regard, the author submits that "superficially", she had access to courts, except when she was refused the right to file for special leave to appeal before the High Court of Australia. However, access to courts should be not about appearance, but substance. It is not about going through motions, but conclusively resolving the issue. In the context of the first set of proceedings, when the injunction was granted against the author, it drastically damaged her life; she would like to take the matter "to trial". If conducted according to law, those proceedings should be dismissed for want of "matter" and the author should be awarded damages. However, based on her past experience, including the massive unjustified costs against her, the author cannot expect a fair trial. Therefore, her fear of massive costs and the failure of the State party to provide "a decent court" constitute a bar to her court access. In the context of the second set of proceedings, she states that she was denied access to court as her application for special leave to appeal was dismissed by the High Court of Australia. As to the third set of proceeding, she submits that she challenged the court's jurisdiction as ASIC did not have the necessary "power" to prosecute her.

5.6 Furthermore, the author submits that, in violation of article 14 (5) of the Covenant, the High Court of Australia refused to "conduct prerogative writ proceedings" and satisfy her application for "prohibition and mandamus against" ASIC. The refusal was based on the grounds that her application did not comply with the necessary format requirements and that it was vexatious. The author submits that she has never been a vexatious litigant, let alone categorized as such by a court. She tried on two occasions to initiate proceedings to review the "criminal court's jurisdiction". Thereafter, when her prosecution trial was before the Supreme Court of Western Australia, she challenged the court's jurisdiction to prosecute her by ASIC on 12 statutory and common law grounds; however her application for review order was dismissed. She submits that her application was not properly examined, as not all the grounds invoked by her were reviewed. She appealed against the dismissal of her application for review to the Court of Appeal and in the High Court of Australia; the court did examine some of the grounds raised by her, but her appeal was rejected. The author also submits that the Court of Appeal applied section 27 of the Criminal Appeals Act, but it should have proceeded under section 16 (2), which concerns appeals against decisions of a single judge who refuses leave to appeal. She notes a number of other procedural errors contrary to different sections of the Criminal Appeals Act. In the context of her application to the High Court of Australia, the author notes that she invoked 10 grounds, challenging the court's jurisdiction to try her, including the grounds that the court was biased and had conspired with a prosecutor. However, her application was dismissed without a proper examination of the grounds cited. She also applied for special leave to appeal against her conviction, in vain.

5.7 Regarding article 14 (1) of the Covenant, the author submits that her right to an impartial tribunal was violated. She notes that she obtained legal advice from two lawyers regarding the judgements in the first and second sets of proceedings, and their impression

was that the respective judges were biased against her. She provides a long account of specific phrases, comments, contradictory findings and actions of the parties and judges in all three sets of proceedings which, according to her, demonstrate the bias of the courts. She also submits that her right to an independent tribunal was violated in the second and third sets of proceedings. In the second set of proceedings, the court adopted an "irrational" judgement, and in the third set of proceedings, the courts adopted "manifestly wrong" judgements, which were wrongly upheld by higher courts.

5.8 She reiterates that she did not have sufficient time to prepare her case in the second set of proceedings, in violation of article 14 (1) of the Covenant.

5.9 The author submits that her right to "present and contest" under article 14 (1) of the Covenant was also violated. In the first set of proceedings, the national courts disregarded her evidence of "proven fabrications" by the plaintiffs. In the second set of proceedings, her affidavits were disregarded and disallowed. In the third set of proceedings, all the grounds presented by the author concerning the court's lack of jurisdiction should have been examined and should have "culminated with an order resolving the magistrate's jurisdiction". The author provides a detailed account of facts, her arguments, various submissions, documents and errors on the part of ASIC, which were disregarded by the courts, in her view.

5.10 As to the State party's argument that the second set of proceedings was civil in nature and therefore article 14 (3) of the Covenant is not applicable, the author notes that this provision explicitly grants the right to summon or examine a witness; however article 14 (1) guarantees the right to a fair trial. Consequently, a violation of the right to fair trial occurs in situations where a trial is not going to be fair unless a party is allowed to examine a witness. In that regard, the author submits that in the second set of proceedings, she was not permitted to examine those responsible for the fraudulent affidavits submitted by the plaintiffs. She notes that the accusation of fraud is a very serious one and the proceedings could convert from civil to criminal. Therefore, a judge's refusal to allow examination of the respective witnesses may be considered either as a violation of article 14 (1) or article 14 (3) of the Covenant.

5.11 As regards a violation of her right under article 14 (2) of the Covenant, the author submits that she could not have been found guilty according to law by a court when its "jurisdiction was challenged, but (the issue) remains unresolved". Her right to be presumed innocent was violated already at the preliminary stage, when a "sentencing judgement was issued and can be found by the public". The author also lists facts which the prosecutor failed to establish and notes that she was found guilty despite the prosecutor's failure to prove, inter alia, that supplying copies of bank statements rather than the originals constituted an offence.

5.12 The author notes that, in violation of article 14 (3) of the Covenant, the prosecution notice did not specify any "factual ingredients". She also argues that she was charged with one offence, but found guilty of another.

5.13 Furthermore, she submits that her rights under article 15 were violated as, according to the conviction notice, she was accused of coming under the category of a "person who does not do an act that is required or directed to do by or under the provisions of this Act". There is no offence specified or law contravened, which means that she was found guilty of an act which is not criminalized. The author also challenges the court's reasoning that led to her conviction and reiterates that she was not required by law to provide the originals of the company bank statements.

5.14 With reference to article 17 (1) of the Covenant, the author maintains that the assault on her reputation and the interference with her privacy and family "occurred collaterally and as a consequence of" her right to a fair trial. In that regard, she reiterates that all three

sets of proceedings against her were conducted without jurisdiction and were unconstitutional "for want of a 'matter'" and that ASIC initiated her prosecution illegally "without powers and for improper purpose". The prosecution destroyed her family life. The judgements are available on the Internet and the author is listed on the ASIC website among the "criminals". She adds that as soon as the injunction order was issued, she was deprived of employment and income. Furthermore, as a result of ongoing proceedings, her daughter started having health problems, and the author's son had to abandon his studies in order to earn a living.

State party's additional observations

6 By note verbale of 28 October 2011, the State party maintained its previous observations as to the inadmissibility of the present communication and, with regard to the author's new allegations concerning a violation of article 14 (5) of the Covenant, submitted that that claim was also inadmissible. It observes that the author claims a violation under that provision on the basis that the Supreme Court of Western Australia refused to "conduct review of the magistrate's jurisdiction" and "entertain the Single Judge Appeal according to law"; the Supreme Court of Western Australia Court of Appeal refused to "decide the magistrates jurisdiction", "entertain criminal appeal according to law", and displayed "disregard of presented grounds in appeal to writ"; and the High Court of Australia refused to "conduct prerogative writ proceedings", "conduct the appeal regarding jurisdiction" and "conduct the appeal to conviction". The State party notes that the author has provided no evidence to substantiate those claims. It observes that she has provided transcripts and judgements of her appeal proceedings in the Supreme Court of Western Australia and the Supreme Court of Western Australia Court of Appeal, which demonstrate that the author's case was reviewed by higher tribunals, according to law, in compliance with article 14 (5) of the Covenant. Moreover, the author admits in her comments that the Supreme Court of Western Australia did consider some of the grounds, which were sourced from her oral submission and that the Court of Appeal had "replied extensively to some of (her) grounds". The State party maintains that the dismissal of the author's special leave to appeal to the High Court of Australia was conducted in accordance with the requirements of section 35A of the Judiciary Act 1903 and does not represent a violation of the author's rights under the Covenant. Therefore, the present claim is inadmissible as it is unsubstantiated.

Author's comments on the State party's additional observations

7. On 23 January 2012, the author submitted further comments. She provided copies of documents relating to the third set of proceedings and reiterated her previous argument regarding the alleged violation of her rights under article 14 (1) in conjunction with article 2 (2); article 14 (2 and 3); and articles 15 and 17 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether the communication is admissible under the Optional Protocol to the Covenant.

8.2 As required under article 5 (2 (a)) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement. It also notes that it is not disputed that the author has exhausted all available domestic remedies, as required under article 5 (2 (b)) of the Optional Protocol. Therefore, the Committee considers that this requirement has been met.

8.3 The Committee notes the author's claim that she was charged and convicted under section 438B of the Corporations Act (2001), which relates to a contractual obligation and carries punishment in the form of imprisonment for up to one year, and contravenes article 11 of the Covenant. In that regard, the Committee takes note of the State party's submission that the obligations the author failed to fulfil as a company director under section 438B of the Corporations Act (2001), and which resulted in her criminal conviction, were not contractual obligations, but legal ones, arising from domestic law. Furthermore, the Committee notes that the author has never been imprisoned as a result of her failure to fulfil any kind of contractual obligation. In these circumstances, the Committee concludes that the present claim is incompatible with the provisions of the Covenant and, therefore, this part of the communication is inadmissible under article 3 of the Optional Protocol.

8.4 The Committee notes the author's claims under article 14 (1) in conjunction with article 2 (2) of the Covenant, in the context of all three sets of proceedings, that the State party has failed to ensure her with a judicial system that fulfils the criteria of competence, independence and impartiality, as required by article 14 of the Covenant, and that the State party refuses to take the necessary steps and adopt laws in order to give effect to the rights protected under article 14. It also notes the author's claim concerning judicial incompetence and arbitrariness in all sets of proceedings in violation of article 14 (1) of the Covenant. It further notes the State party's arguments that the author has failed to substantiate those claims and that her claims appear to be based entirely on her own assessment of the legal issues, which was the subject of the numerous court appearances detailed in her communication. The Committee also takes note of the State party's submission that the interpretation of Australian law made by the author has been addressed competently and to a sufficient degree of detail in the judgements of the courts.

8.5 In the light of the above, the Committee observes that the author's allegations relate primarily to the evaluation of facts and evidence by the State party's courts. In this respect, the Committee recalls that it is generally for the courts of States parties to evaluate facts and evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice.[6] The Committee will exercise its powers of review only if it has been ascertained that the evaluation or interpretation was clearly arbitrary or amounted to a denial of justice.[7] The Committee notes that in the present case, the information contained on file does not permit it to conclude that the court proceedings in the author's case have suffered from such defects. In these circumstances, the Committee finds that the author has failed to sufficiently substantiate her claim under article 14 (1) in conjunction with article 2 (2) of the Covenant, for purposes of admissibility, and declares it inadmissible under article 2 of the Optional Protocol.

8.6 Regarding the author's claim under article 14 (1) of the Covenant concerning the fact that she did not have sufficient time to prepare her submissions during the second set of proceedings, in the light of the available information and documents and in the absence of any other pertinent information on file, the Committee concludes that the author has failed to sufficiently substantiate her claim for the purposes of admissibility and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.7 The Committee notes the author's claim that her right to be presumed innocent as guaranteed under article 14 (2) of the Covenant was violated in the context of the third set of proceedings, as she could not have been found guilty according to the law by a court the jurisdiction of which she had challenged, and because she was found guilty of supplying an

[6] See, inter alia, communication No. 541/1993, *Errol Simms* v. *Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

[7] See, inter alia, communications No. 2058/2011, *O.D.* v. *the Russian Federation*, decision of inadmissibility adopted on 26 March 2012, para. 4.2; No. 2103/2011, *Poliakov* v. *Belarus*, Views adopted on 17 July 2014, para. 9.4.

electronic version of the company bank statements even though the prosecutor was unable to prove that originals were required. The Committee recalls its general comment No. 32, in which it states that under article 14 (2), everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.[8] In that regard, the Committee takes note of the State party's argument that the author has failed to substantiate this claim and, instead, has offered personal analysis of the legal procedure and the case that resulted in her conviction. Accordingly, and in the light of the information provided by the parties, the Committee considers that the author has failed to sufficiently substantiate her claim, for purposes of admissibility, and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

8.8 The author also claims a violation of article 14 (3 (a)) on account of the fact that the national authorities had failed to inform her "about the facts behind the charge" as, even though the prosecution notice handed to her contained the reference to section 438B of the Corporations Act (2001), the actual "particularities" were missing. In this connection, the Committee notes the State party's submission that the author was informed of the facts behind the charge, as she has provided and quoted the prosecution notice, which includes details of the charge. In this regard, the Committee notes that the copy of the prosecution notice of 11 August 2006 was brought to the author's attention promptly and that it contains information concerning the charges and makes the necessary reference to the author's failure, as a company director, to comply with a number of subparagraphs of section 438B. Consequently, and in the light of the information provided by the author and the available documents on file, the Committee considers that the present claim is inadmissible under article 2 of the Optional Protocol, as it is insufficiently substantiated.

8.9 The author also claims a violation of her rights under article 14 (3 (e)) of the Covenant, as she believes that in all three sets of proceedings, her right to present evidence and to summon and examine witnesses was violated. In this connection, the Committee recalls that article 14 (3 (e)) of the Covenant refers specifically to matters of a criminal nature.[9] Therefore, the Committee considers the present claim, insofar as it relates to the first and the second sets of proceedings, which were both of a civil nature, is inadmissible under article 3 of the Optional Protocol to the Covenant. As to the third set of proceedings, which were criminal in nature, the Committee notes that the author submits in general terms that the examination of her witness was constantly disrupted by the prosecutor and that her request to summon and question D. was refused since his statements were already in the case file, in a written form. The State party in this regard submits that that there is no requirement for a State party to compel a witness to appear in court on behalf of the author and that, in addition, the author has provided no evidence to suggest that the State party specifically impinged the author's right to call a witness to her defence. In these circumstances, and in the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate her present claim for the purposes of admissibility, and concludes that it is inadmissible under article 2 of the Optional Protocol.

8.10 Furthermore, the author claims that she is a victim of a violation of article 14 (5) of the Covenant, as her conviction and sentence was never reviewed by a higher tribunal

[8] See the Committee's general comment No. 32 (2007) on article 14: right to equality before courts and tribunals and to a fair trial, para. 30.

[9] Ibid., para. 39.

according to law. The Committee notes that, on 20 February 2008, the Magistrates Court of Western Australia convicted the author pursuant to section 438B (4) of the Corporations Act and fined her in the amount of $A 500 and $A 1,000 in costs. The author appealed, claiming that the court did not have jurisdiction to convict her, but on 16 July 2009, the Supreme Court of Western Australia Court of Appeal dismissed her application stating that the lower court had the necessary jurisdiction. The Committee observes that the Court of Appeal examined and analysed extensively the grounds invoked by the author concerning her conviction, the validity of the prosecution notice, the adequacy of the reasons in the judgement and the allegations of bias. On 9 December 2009, the High Court of Australia rejected the author's application for special leave to appeal, finding the author's request unfounded. In these circumstances, the Committee considers that the author has failed to provide sufficient substantiation of her claim under article 14 (5) of the Covenant and concludes that the present claim is inadmissible under article 2 of the Optional Protocol.

8.11 The Committee further notes the author's claim under article 15 of the Covenant that she had been found guilty of an action which did not constitute an offence. In this connection, the author provides an extensive explanation concerning the term "books" and the fact that she was not obliged to submit to the company's external administrators the originals of the company books. The Committee also takes note of the State party's submission that this claim is inadmissible as unsubstantiated as the author offers no further explanation or evidence in support of her claim, but instead discusses the definition of "books" under domestic law, specifically the Corporations Act. In the alternative, according to the State party, this claim is inadmissible as it is incompatible with the provisions of the Covenant, since article 15 relates to the prohibition of retroactive criminalization of any act which did not constitute a criminal offence at the time it was committed. However, the author does not appear to be alleging that the Corporations Act she was charged under was not in force at the time when she was charged. Accordingly, given that on 20 February 2008, the author was not convicted by the retroactive application of section 438B of the Corporations Act (2001), the Committee considers that the author's claim is incompatible with the provisions of the Covenant, and therefore declares this part of the communication inadmissible under article 3 of the Optional Protocol.

8.12 Lastly, the author claims to be a victim of a violation of article 17 of the Covenant as the judgements in her case were posted on the Internet and she claims that the proceedings traumatized her daughter. In addition, she could not find any other gainful employment. In this regard, the Committee takes note of the State party's reply that during the trials, the author never claimed that the exceptions to the publishing of judgements mentioned in the last sentence of article 14 (1) of the Covenant should be applied in her case and, therefore, the judgements at issue should not have been rendered public. Furthermore, the Committee notes that the author has not substantiated the causal link between the alleged breach of her rights under article 17 of the Covenant and the fact that her daughter was traumatized by the court proceedings concerning her mother, and that the author could not find "other gainful employment". In these circumstances and in the absence of any further pertinent information on file, the Committee considers that the author has failed to sufficiently substantiate her present claim for the purposes of admissibility, and concludes that it is inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides that:

(a) The communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) The present decision shall be transmitted to the State party and the author of the communication.